

FREDERICK POLICE DEPARTMENT GENERAL ORDER

Section 5: Special Populations **Order Number:** 560
Topic: DIPLOMATIC AND LEGISLATIVE IMMUNITY **Issued by:** Chief of Police
Approved: 12/02/19
Review: Annually in November by Professional Services Division Commander
Supersedes: G.O. 560 dated 10/01/00

.01 PURPOSE:

To specify procedures for the handling of persons with diplomatic or legislative immunity.

.02 CROSS-REF:

G.O. [570](#), "Aliens and Requests for Asylum"

.03 DISCUSSION:

The special privileges and immunities accorded foreign diplomatic and consular representatives assigned to the U.S. reflect rules developed among the nations of the world regarding the manner in which civilized international relations must be conducted. The underlying concept is that foreign representatives can carry out their duties effectively only if they are accorded a certain degree of insulation from the application of standard law enforcement practices of the host country. It is emphasized that even at its highest level, diplomatic immunity does not exempt diplomatic officers from the obligation of conforming with national and local laws and regulations. The purpose of these privileges and immunities is not to benefit individuals but to ensure the efficient and effective performance of their official missions on behalf of their governments.

Protection from civil process to members of Congress is given by the U.S. Constitution and that of the members of the State Legislatures is generally secured to them by the constitutions of the various states or by Common Law.

.04 POLICY:

The Frederick Police Department will ensure that any diplomatic and consular officials or any state legislators with whom they have contact will be accorded their respective privileges, rights and immunities as directed by international law, federal statute and state laws. These officials will be treated with the courtesy and respect that befit their distinguished positions. Officers may intervene to any extent necessary with persons of any level of immunity in circumstances where public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed. This includes the authority for officers to defend themselves and others from personal harm.

.05 DEFINITIONS:

DIPLOMAT: An officer of a foreign government assigned to an embassy, consulate or diplomatic mission.

DIPLOMATIC/CONSULAR IMMUNITY - The freedom from local jurisdiction accorded to duly accredited diplomatic officials, their families, and servants.

LEGISLATIVE IMMUNITY - The immunity from civil process afforded members of the state or federal legislature *who are en route to or returning from an official session of the Legislature.*

.10 FOREIGN PERSONS HAVING IMMUNITY:

There are numerous categories of people who have various degrees of immunity such as diplomatic officials, consular officials, honorary consuls, family and staff of foreign diplomats, etc. Each of these officials and other persons have been issued various official identification papers or cards. Police personnel contacting them can ascertain their respective status and titles by requesting their official

identification which will indicate status and title.

1. *Full criminal immunity* is given to diplomatic agents, administrative and technical staff and their families. Full criminal immunity means more than immunity from prosecution. It means that the residence, vehicles, papers, and correspondence of an individual with this immunity classification cannot be searched, the person cannot be detained or arrested and the person is not required to give evidence as a witness.
2. Service staff members have *limited criminal immunity*. They can be detained, arrested, and prosecuted for criminal acts. If prosecuted, service staff members can raise “official acts” immunity as an affirmative defense. The court will determine whether or not the member was acting in an official capacity at the time of the offense. They can be required to give evidence as witnesses and, in accordance with local law, their persons and effects can be searched.

20 DIPLOMATS VIOLATING TRAFFIC LAWS:

1. As a rule, foreign diplomats cannot be arrested or detained. However, when a driver is stopped for a moving traffic violation and has proper and valid identification indicating diplomatic immunity, the officer may take appropriate enforcement, including a warning (verbal or written) or the issuance of a citation. The issuance of a citation does not constitute an arrest or a detention. A person without proper identification, but believed to be a foreign diplomat, may be temporarily detained while verifying immunity status. **A foreign diplomat with full immunity cannot be compelled to sign the citation and cannot be arrested for refusal to sign or accept the citation.** In all cases, officers will document the facts of the case fully, and forward a copy of the citation and any other documentation to the U.S. Department of State as soon as possible.
2. When an officer determines that, in the interest of public safety, a foreign diplomat cannot be permitted to continue to operate a motor vehicle, (e.g., “DWI”), the officer will immediately summon a supervisor. The primary consideration of this type of incident should be to see that the diplomatic/consular official is not a danger to himself or the public. The diplomat may be provided transportation to a mutually agreeable destination or may call for other transportation. Persons having diplomatic immunity **will not be compelled to submit to sobriety or other mandatory tests and, except in extreme cases, will not be physically restrained. Force will not be used except when necessary to prevent injury to the diplomat or others.** (NOTE: Sobriety maneuvers may be *offered* in accordance with set procedures in order to determine the sobriety of the driver but may not be required.)
3. The **property** of a diplomat enjoying full immunity, including his vehicle, **may not be searched or seized.** Such vehicles may not be impounded, but may be towed, (or moved with the owner/operator’s permission), the distance necessary to remove them from obstructing traffic or endangering public safety. (Officers will accept the towing bill and forward it to the Office of the Chief of Police.) If a vehicle that is owned by a diplomat is suspected of being stolen or used in the commission of a crime, occupants of the vehicle may be required to present vehicle documentation to permit police verification of the vehicle’s status through standard computer checks. If the vehicle is verified to have been stolen or to have been used by unauthorized persons in the commission of a crime, it may be searched. (U.S. Department of State, Office of Foreign Missions. Guidance For Law Enforcement Officers)
4. To verify the status, driver’s licenses, registration plates, detention, arrest, etc. concerning a possible diplomat, contact the Diplomatic Security Service Command Center at:
 - a. 202-895-3521 between the hours of 0800 and 1700 or

b. 571-345-3146

They are available 24 hours a day, 7 days a week to assist in answering questions, etc.

.30 DIPLOMATS INVOLVED IN CRIMINAL ACTIVITY:

When an officer is called to the scene of a **criminal incident** involving a person who claims diplomatic immunity or consular immunity, the following steps should occur:

1. Verify the status of the suspect
 - A. In **all** cases, including those in which the suspect provides a State Department-issued identification card, the officer should verify the status with the U.S. Department of State, or in the case of the U.N. community, with the U.S. Mission to the United Nations.
 - B. If the subject is unable to produce satisfactory identification and it is a situation which normally would result in an arrest, notify the individual that he will be detained until his identity can be confirmed.
 - C. Call Diplomatic Security Service Command Center for assistance.
2. Once verified, prepare a report, fully describing the details/circumstances of the incident in accordance with normal police procedures.
3. **If an officer verifies that the suspect has full immunity, the suspect may not be arrested and may not be handcuffed or detained except when posing an immediate threat to safety.**
4. Once all pertinent information is obtained, a person with full immunity must be released.
5. A copy of the incident report should be faxed to the Diplomatic Security Service, Protective Liaison Division at (202) 895-3646 or, in the case of the U.N. community, to the USUN Host Country at (212) 415-4162 as soon as possible.

.40 DOCUMENTATION:

All incidents involving claims of any level of immunity, whether bona fide or not, will be documented in an incident report. Copies of reports and any additional documents involving persons *with full or limited criminal immunity* will be forwarded to the U.S. Department of State by Records Section personnel at the Diplomatic Office, 3507 International Pl., NW, Washington, DC, 20008.

A primary source document relating to diplomatic immunity is the US Department of State "Guidance for Law Enforcement Officers: Diplomatic and Consular Immunity." Copies of this document are available to all personnel and are in the Departmental Library.

.50 LEGISLATIVE IMMUNITY:

1. U.S. Senators and Congressmen shall, in all cases, except treason, felony, and breach of the peace, *be privileged from civil process during their attendance at the session of their respective legislative houses*, and in going to and returning from the same; and for any speech or debate *in either house*, they shall not be questioned in any other place. (This basically means that these individuals cannot be served with civil papers during, or enroute to or from, a session of the legislature. They also cannot be sued or served with suit based upon what they say in debate in the legislature, and they cannot be questioned about comments made in the legislature.)
2. While the Maryland Constitution makes no provision to exempt State Legislators from arrest or civil process, the common law makes Maryland legislators immune from civil process while

attending, going to, or returning from a session of their respective houses. (Civil process includes any paperwork, connected with a civil court proceeding, that may be personally served, like a subpoena or a summons, or civil protection orders. Civil process does not include any criminal paperwork, summons, subpoena or any process stemming from a criminal charge.)

3. In addition, the Maryland Constitution provides that no senator or delegate shall be liable in any criminal prosecution for words spoken in debate.
4. Neither U.S. congressmen or senators, nor members of the Maryland State Legislature, House of Delegates or Senate are privileged from arrest and prosecution for any criminal offense during their attendance at a session or in going to and returning from their respective houses. These offenses include any violations of Maryland Transportation Article.

.60 ORGANIZED MILITIA:

No person belonging to the organized militia shall be arrested on any process except such as may be issued by military authority, while going to, remaining at, or returning from any place at which the person be required to attend for military duty. (Maryland Annotated Code, Public Safety Article, Section 13-905)

Attachment: Summary of Law Enforcement Aspects

Diplomatic and Consular Privileges and Immunities From Criminal Jurisdiction
Summary of Law Enforcement Aspects

Category		May Be Arrested or Detained	Residence May Be Entered Subject to Ordinary Procedures	May Be Issued Traffic Citation	May Be Subpoenaed as Witness	May Be Prosecuted	Recognized Family Member
Diplomatic	Diplomatic Agent	No ¹	No	Yes	No	No	Same as sponsor (full immunity and inviolability).
	Member of Administrative and Technical Staff	No ¹	No	Yes	No	No	Same as sponsor (full immunity and inviolability).
	Service Staff	Yes ²	Yes	Yes	Yes	No – for official acts. Otherwise, yes. ²	No immunity or inviolability. ²
Consular	Career Consular Officers	Yes, if for a felony and pursuant to a warrant.	Yes ⁴	Yes	No – for official acts. Testimony may not be compelled in any case.	No – for official acts. Otherwise, yes. ²	No immunity or inviolability. ²
	Honorary Consular Officers	Yes	Yes	Yes	No – for official acts. Yes, in all other cases.	No – for official acts. Otherwise, yes.	No immunity or inviolability.
	Consular Employees	Yes ²	Yes	Yes	No – for official acts. Yes, in all other cases.	No – for official acts. Otherwise, yes. ²	No immunity or inviolability. ²
International Organizations	International Organization Staff	Yes ³	Yes ³	Yes	No – for official acts. Yes, in all other cases.	No – for official acts. Otherwise, yes. ³	No immunity or inviolability.
	Diplomatic – Level Staff of Missions to International Organizations	No ¹	No	Yes	No	No	Same as sponsor (full immunity and inviolability).
	Support Staff of Missions to International Organizations	Yes	Yes	Yes	No – for official acts. Yes, in all other cases.	No – for official acts. Otherwise, yes.	No immunity or inviolability.

- 1 Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.
- 2 This table presents general rules. Particularly in the cases indicated, the employees of certain foreign countries may enjoy **higher** levels of privileges and immunities on the basis of bilateral agreements.
- 3 A small number of senior officers are entitled to be treated identically to “diplomatic agents.”
- 4 Note that consular residences are sometimes located within the official consular premises. In such cases, **only** the official space is protected from police entry.